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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,890	09/05/2003	Robert Looker	53800.8019.US00	7190
34055	7590	05/13/2005		
PERKINS COIE LLP POST OFFICE BOX 1208 SEATTLE, WA 98111-1208			EXAMINER MEREK, JOSEPH C	
			ART UNIT 3727	PAPER NUMBER
DATE MAILED: 05/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary

Application No.

10/655,890

Applicant(s)

LOOKER, ROBERT

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/05/03.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 23 is/are pending in the application.
- 4a) Of the above claim(s) 20-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-14, 16-19 and 23 is/are rejected.
- 7) ☒ Claim(s) 4 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/5/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19 and 23, drawn to a container, classified in class 220, subclass 1.5.
- II. Claims 20-22, drawn to method of loading a container, classified in class 414, subclass 800.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the claims to the container do not require loading cargo in the container. The container could be used without loading cargo in the container and could perform as a support for another container.

During a telephone conversation with Kenneth H. Ohriner on 4/27/05 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-19 and 23. Affirmation of this election must be made by applicant in replying to this Office action. Claims 20-22 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-14, and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by McSwain (US 3,768,540). Regarding claim 1, see Figs. 1, 3 and 6, where the container has curved edges along 16 which the door 12 extends. The front is a matter of orientation. Regarding claim 2, the face 18 is the support member attached along the curved front edge. More over, the top of 16 have a slight curvature. The front wall is curved from left to right as seen in Fig. 1. Regarding claim 3, the cable is 38 which is in the channel 24. See also Fig. 3 where both channels and cables are shown. Regarding claim 5, the process limitation "extrusion" does not require any structure that is not in the reference. Regarding claim 6, see Figs. 1 and 3, where the bar is attached to the door when it is in position and securable to at least one of the sidewalls and maintains the door in the closed position. Regarding claim 7, the door rolls up as seen in Fig. 2. Regarding claim 8, see Fig. 3. Regarding claim 9, the side walls have a straight section that extends from the base 48 to join the curved edge. Regarding claim 10, the rear wall, which is opposite 12, is flat as seen in Fig. 1. Regarding claim 11, see the discussion of claim 1 above. The container is capable of being used for transporting airfreight. The limitation does not require any structure that is not in the reference.

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Regarding claim 12, see Fig. 3. Regarding claim 13, the means for retaining the cables in the channels is the narrow upper end of the channel which is smaller than the diameter of the cable. The structure in the reference is similar to the embodiment shown in Fig. 9 of the instant invention. Regarding claim 14, see Figs. 1-3 and 6. The front is curved since it is outwardly bowed as seen in Fig. 1. Regarding claims 16-19, see the above discussion of the previous similar claims.

Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by Jones (US 1,370, 500). Regarding claim 23, it is inherent that the structure on which Jones is placed has four walls and a base. The structure is capable of transporting cargo. See Figs. 2-3, where the detail is shown. The sides supports A are located on either side of the door and include the channel members 22 and 23. The door has cables as seen in Fig. 5 which are in the channel. The pivotal levers move from an open position to a closed position for securing the cables within the first and second channels.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (US 1,370,500). Regarding claim 23, to the degree that it is not inherent that Jones requires four walls and a base, official notice is taken that it is well known to employ

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window screens in sheds, which have four walls and a base that are delivered or transported in an assembled condition. It would have been obvious to employ the structure of Jones in a shed window to keep out insects and animals while allowing ventilation. The shed is capable of performing as a cargo container.

Claims 1, 2, 5, 6, 7, 9, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mittlemann et al (US 4,428,491) in view of Looker (US 3,904,064). Regarding claim 1, Mittlemann et al teaches the claimed structure but does not teach the front wall having a curve. Looker as seen in Fig. 1, teaches a similar container where the front wall is curved instead of having the sharp corners. It would have been obvious to shape the container of Mittlemann et al as taught by Looker to allow the container to more closely fit the shape of the airplane in which it is intended to reside. Regarding claim 2, see Figs. 4. Regarding claims 5, the "extrusions are seen in Fig. 4. The term does not require any structure that is not in the reference. Regarding claim 6, the door bar is the lowest of the slats on which the handle is seen in Fig. 1. This is the leading edge of the door. It would have been obvious to one of ordinary skill in the art to secure the door bar to prevent accidental loss of the contents or cargo. Regarding claim 7, the door is a roll up door as seen in Fig. 1. Regarding claim 19, the straight section of the sidewalls is seen as 19 in Mittlemann et al in Fig. 1. Regarding claim 10, the back wall 22 is flat. Regarding claim 11, the front wall in the modified container of Mittlemann et al is curved.

Allowable Subject Matter

Claims 4 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

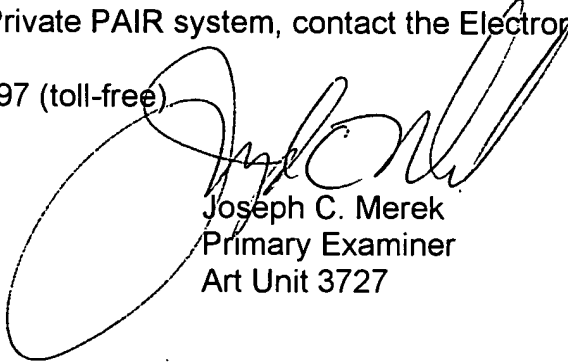
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Morrison (US 4,046,277 is cited for teaching a cargo container with curved front wall as seen in Fig. 3. Lewis (US 5,186,231), Dumas (US 6,685,251), and Lamb (3,051,232) are all cited for teaching moveable covers with cables.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is 571 272-4542. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek
Primary Examiner
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